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3 CLERK US DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
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15 UNITED STATES OF AMERICA,
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17 Plaintiff/Respondent,
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19 FELIX MONTANO-FIGUEROA,
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21 Defendant/Petitioner.
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CASE NO. 08-CV-2042 BEN
(08-CR-0517)

23 ORDER DENYING CERTIFICATE
24 OF APPEALABILITY
25

26 Concurrently herewith, the Court entered judgment denying Petitioner's Motion to Vacate, Set
27 Aside, or Correct Sentence ("Motion") under 28 U.S.C. § 2255. Effective December 1, 2009, this
28 Court must issue or deny a certificate of appealability when it enters a final order adverse to the
1 applicant. Rule 11 foll. 28 U.S.C. § 2255; 28 U.S.C. § 2253; Fed.R.App.P. 22(b). For the reasons set
2 forth below, the Court **DENIES** certificate of appealability as to all claims asserted by Petitioner in
3 his Motion.

4 A certificate of appealability ("COA") is authorized "if the applicant has made a substantial
5 showing of the denial of a constitutional right." 28 U.S.C.A. § 2253(c)(2). The applicant must meet
6 the "substantial showing" standard with respect to each issue he or she seeks to raise on appeal.
7 *Lambright v. Stewart*, 220 F.3d 1022, 1024 (9th Cir. 2000). "The issue of whether to grant a COA
8 'becomes somewhat more complicated where, as here, the district court dismisses the (claims) based
9 on procedural grounds.'" *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000), quoting *Slack*

1 v. *McDaniel*, 529 U.S. 473, 484 (2000). In that situation, this Court “must decide whether ‘jurists of
2 reason would find it debatable whether the petition states a valid claim of the denial of a constitutional
3 right’” and “whether ‘jurists of reason would find it debatable whether the district court was correct
4 in its procedural ruling.’” *Id.*

5 In this case, the Court finds that reasonable jurists would not find it debatable that Petitioner
6 was denied a constitutional right or that the district court was not correct in its procedural ruling.
7 *Slack*, 529 U.S. at 484; *Lambright*, 220 F.3d at 1026. Accordingly, the Court hereby **DENIES**
8 certificate of appealability to all claims set forth in Petitioner’s Motion.

9 **IT IS SO ORDERED.**

10 Date: 7/15, 2010

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Hon. Roger T. Benitez
Judge, United States District Court

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